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C O N F I D E N T I A L ZAGREB 001898

SIPDIS

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TAGS: [KAWC](#) [PREL](#) [HR](#)

SUBJECT: ICTY PUSHES CROATIAN COOPERATION IN NON-PAPER

Classified By: Poloff Justin Friedman, reasons 1.5 (b) & (d)

1. (SBU) ICTY representative Thomas Osorio provided us on September 1 a copy of the non-paper (text para 3) which he had just delivered to the GoC. Osorio told us that this paper was part of the Prosecutor's strategy of providing maximum transparency to Croatia on outstanding issues in advance of her October report to the Security Council on Croatia's cooperation with the ICTY.

2. (C) Osorio added that he had been asked by the prosecutor's office to work "intensively" with Croatian authorities to ensure improved cooperation in coming months. He stressed, however, that despite rumors to the contrary, there were absolutely no negotiations going on with anybody in or outside the GoC to facilitate the surrender of indicted war criminal Ante Gotovina.

3. (SBU) BEGIN TEXT OF NON-PAPER:  
Non-Paper  
August 2003

Co-operation between Croatia and the OTP (ICTY)

Croatia's co-operation with the OTP has improved since the last visit of the Prosecutor to Zagreb in April 2003; the Government made certain efforts to resolve the outstanding issues. There are, however, segments where co-operation is still not fully sufficient and causes concerns in the light of the ICTY's Completion Strategy, recently endorsed by the UN Security Council (Resolution 1503). Full co-operation with the OTP is one of the fundamental prerequisites for the success of the ICTY's Completion Strategy.

At this stage, the Prosecutor decided to circulate this Non-paper to the Government and the relevant States taking into account her briefing to the UN Security Council expected in October. In the OTP's view it is possible to resolve all or the majority of the remaining outstanding issues in the near future, allowing the Prosecutor to state Croatia's full compliance with the OTP's requests.

Arrest and transfer of the indictees still at large

At the moment there is one fugitive at large \* Ante Gotovina, who is, according to available sources, believed to be in Croatia (or in adjacent areas of Herzegovina in BH). Interviews with this fugitive have been published in Croatia on a number of occasions lately, despite official claims that nobody knows where he is hiding. The Prosecutor expressed on a number of occasions her disappointment in regard to the way in which the Croatian Government had handled the case of Gotovina. It is fundamentally important that the Government undertakes pro-active efforts to locate and arrest Gotovina. It is not acceptable that the Government, as it seems, has chosen to wait passively for "somebody" to provide information on his location or for Gotovina himself to decide to surrender.

UN SC Resolution 1503 & urges Member States to consider imposing measures against individuals and groups or organisations assisting indictees at large to continue to evade justice<sup>8</sup>. The reported efforts of the Government in this respect under Rule 591 (in April this year) (FOOTNOTE: Rule 59 provides that a State shall report to the Registrar its inability to execute the arrest warrant and the reasons thereof. Failure to report on actions taken may lead to report by the President to the Security Council. END FOOTNOTE.) are not sufficient, and in any event the Government is required to report regularly to the Registrar on the actions taken in this respect.

All in all the situation with Gotovina gives rise to concerns about ability of the Government to control the special services and to act without undue delay upon any new indictments issued by the ICTY. It is encouraging though that the Government expressed to the Prosecutor a commitment to act immediately upon any new indictment/ arrest warrant.

Requests for documents, access to archives and availability of witnesses.

On the positive side, for a long time now the situation with interviews by the OTP of potential witnesses and suspects

could be assessed in positive terms. The Government was effective and co-operation in this respect is progressing well (with some rare and minor problems with some specific persons to be interviewed).

The situation with the access to the documentary evidence and archives has additionally improved but is not fully satisfactory. The OTP has had access or obtained documents from a number of locations/ archives in Croatia (including Government Ministries, Office of the President, HVO archive in the State Archive of Croatia and others). The Croatian

authorities also allowed on-site reviews of certain important collections of documents.

In July 2003 the OTP conducted a comprehensive review of all its Requests for Assistance and Information (RFA-s). On 7 August the results of this review, with clear, detailed and concise benchmarks, were provided to the Head of the Croatian Government's Office for Co-operation with the ICTY and the ICJ, Mr. F. Krnic.

The Croatian side was informed about 16 RFAs regarded on 7 August outstanding (partially answered, or in some cases requiring further discussions). Some of the RFAs are two years old. Without going into the details of the outstanding RFAs (or part of RFAs), which were presented to the authorities and have been discussed on a number of occasions, it is important to stress that OTP Requests are precise and specific. The follow up discussions with the authorities have also clarified additionally the OTP's needs. The above mentioned outstanding Requests deal with the following topics: identified Military units and their specific documentation; specific reports of the Croatian Ministry of Defence during a limited period of times documentation of the late Defence Minister G. Susak; specific Bank records; specific information of the Croatian Intelligence community; specific documents in regard to the Operation 'Storm'; specific statistical data from the 1991 census; and with some other matters. It is also expected by the OTP that the Croatian authorities respond to the RFAs in good faith with substantial materials, and completely responsive to the subject matter of the RFAs. Unfortunately, it is not always the case.

War crimes cases in the local courts.

In view of the ICTY's Completion Strategy, the importance of local war crimes investigations and prosecutions gains special significance. The UN SC Resolution 1503 additionally stresses importance of 'the strengthening of national judicial systems' to the rule of law in general and to the implementation of the ICTY Completion Strategy and notes 'the obligation ... of the countries of the former Yugoslavia to investigate those accused whose cases would not be tried by the ICTY and take appropriate action with respect to indictment and prosecution, while bearing in mind the primacy of the ICTY over national courts'.

It could be stated at this stage that, despite the fact that a number of war crimes cases have already been processed, only one serious war crimes trial has been conducted with the first serious result - the Norac-Oreskovic & al. trial in Rijeka. However, the written verdict in this case has not been issued yet and the case is under appeal. Some other cases (like Lora prison case in Split) were not so successful. The OTP has already established very positive relations with the office of the Croatian State Attorney Mr. M. Bajic (the OTP assisted and will assist more in some particular war crimes investigations and prosecutions launched by Bajic's office, which has already issued first indictments for war crimes). However, it is expected that Croatia demonstrate that it is serious about pursuing all war crimes suspects in Croatia, regardless of the nationality of the perpetrators or victims.

The Government has introduced a draft law on the Special war crimes Court(s) which, however, mainly deals with the ICC. In general, this draft law is designed to facilitate Croatian assistance to the ICC and aims at a more general reform of the domestic legal system so as to better carry out domestic prosecutions of war crimes cases. The draft also envisages cases being remitted to Croatia by the ICTY, but the terms and procedures of taking over the cases and evidence are unclear. Another interesting feature is that in many respects, this draft seems superior to existing Croatian legislation designed to facilitate cooperation with the ICTY.

END TEXT OF NONPAPER.  
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